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State v. Stewart Appellant's Brief 2 Dckt. 43453

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43453
)	
v.)	ADA COUNTY NO. CR 2014-15996
)	
ROBERT EUGENE STEWART,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE SAMUEL A. HOAGLAND
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Robert Eugene Stewart appeals from his judgment of conviction on a felony charge of operating a motor vehicle without the owner's consent, and from the district court's order awarding restitution. He asserts that the district court erred when it admitted an estimate for the cost of repairs to the vehicle because the estimate was not relevant as it was prepared for a different vehicle. He also asserts that the district court abused its discretion when it awarded restitution because the amount of the award was not supported by substantial and competent evidence.

This reply brief is necessary to address the State's attempt to change the subject of the first issue from one of relevance to one of witness credibility. It is also necessary to address the State's argument that there was substantial evidence to support the district court's restitution order.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Stewart's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Did the district court err when it held that the estimate for the cost of repairs was relevant?
2. Did the district court abuse its discretion when it awarded restitution for the cost of repairs to the vehicle?

ARGUMENT

I.

The District Court Erred When It Held That The Estimate For The Cost Of Repairs Was Relevant

In the Appellant's Brief, Mr. Stewart argued that the district court erred when it admitted an estimate for repairs for a vehicle other than the one in question because the estimate was not relevant. (Appellant's Brief, pp.4-6.) The issue statement read as follows: "Did the district court err when it held that the estimate for the cost of repairs was relevant?" (Appellant's Brief, p.3.) The State "rephrases" the issue as follows: "Has Stewart failed to show that the district court abused its discretion by admitting the estimate for the cost of repairs to the truck into evidence at the restitution hearing?" (Respondent's Brief, p.3.) This is not the issue. The State does not simply "rephrase" the issue as it claims. It attempts to change it entirely.

The State's only argument regarding the estimate is conclusory; it provides no analysis as to *why* an estimate prepared for a different vehicle could be relevant but simply repeats the rule. (Respondent's Brief, p.6.) It argues,

The estimate was relevant to the court's restitution determination . . . The estimated cost to repair the damages to the truck tended to 'prove the existence of a fact of consequence in the case,' specifically the losses incurred by Farmers Union Ditch Company. Further, the estimate made 'the existence of that fact,' (the amount of loss), 'more probable than it would be' without the estimate.

(Respondent's Brief, p.6.) The State does not even attempt to explain why the estimate is relevant and respond to Mr. Stewart's argument. Instead, it responds to an argument that it claims was somehow implicit in Mr. Stewart's argument. (Respondent's Brief, pp.6-7.) In this way, it avoids the issue by attempting to change it—along with the

standard of review—to one of witness credibility and the reasonable inferences a trial court is allowed to make. (Respondent’s Brief, p.6.) Relevance has nothing to do with either of these subjects, and determinations of relevancy are reviewed *de novo*. *State v. Hairston*, 133 Idaho 496, 502 (1999). As such, the State’s argument is a red herring.

Finally, the State posits that it was “up to the district court to determine whether Vaughn testified falsely . . . or whether the some of the information in the vehicle description field of the estimate was simply inaccurate and did not render the rest of the estimate invalid or irrelevant.” (Respondent’s Brief, p.7.) First, Mr. Stewart never argued that Mr. Vaughn testified falsely. He argued that the estimate was not relevant. Second, once it was established that the estimate was prepared for a different vehicle, the district court should not have admitted the estimate because there was no way for it to know whether the rest of the estimate was accurate. Like Mr. Vaughn, the district court was not an expert in auto body repair costs. As such, the State has failed to show that the district court did not err when it held that the estimate was relevant.

II.

The District Court Abused Its Discretion When It Awarded Restitution For The Cost Of Repairs To The Vehicle

Because the estimate for repairs to the truck was prepared for a different vehicle, the district court’s restitution order was not supported by substantial evidence. The State argues that “Vaughn’s testimony and the written estimate . . . provide substantial

evidence to support the district court's restitution order."¹ (Respondent's Brief, p.9.) However, at the restitution hearing, the prosecutor relied on the same flawed logic. He said, "The best evidence we have of the damage that actually occurred is Mr. Vaughn's testimony and the estimate provided in his testimony to that estimate is accurate as to the charges that were actually caused by Mr. Stewart" (1/15/16 Tr., p.26, L.22 – p.27, L.1.) Thus, Mr. Vaughn's testimony was used to support the validity of the estimate and vice-versa. The obvious problem with this logic is the estimate was prepared for a different vehicle. And even Mr. Vaughn admitted that he had to rely on the estimate to recall the exact damages. (1/15/16 Tr., p.17, Ls.13-17.)

Restitution can only be awarded for "actual economic loss." *State v. Lombard*, 149 Idaho 819, 823 (Ct. App. 2010) (citing I.C. § 19–5304(1)(a)(2)). Such loss needs to be determined by a preponderance of the evidence, and the evidence here comes nowhere close to a preponderance. No one at the hearing was an expert on auto body repair. The estimate provided the only evidence along those lines. It was prepared for a different vehicle. Therefore, it could not be used to determine actual economic loss.

With respect to the estimate, the State again refers to the issue as one of witness credibility or weight of the evidence. It says, "As discussed above, determinations regarding the credibility of witnesses, the weight to be given to testimony, or the reasonable inferences to be drawn from the evidence are the exclusive province of the

¹ The State refers to the cost to repair the damage to the truck as \$2,518.75. (Respondent's Brief, pp.7, 9.) In the Appellant's Brief, Mr. Stewart used the amount of \$2,688.79 as shown on the restitution order. (Appellant's Brief, pp.6, 8, 9.) Included in the \$2,688.79 figure was \$159.99 for the cost to repair the fence and gate, as well as a \$10.05 administrative fee. Mr. Stewart is not challenging those fees. Thus, the \$2,518.75 figure is the amount in controversy. (See 1/15/16 Tr., p.27, L.27 – p.28, L.14.)

trial court” (Respondent’s Brief, p.10.) This is not the issue. And even if it was, the district court could certainly not make a *reasonable* inference that the cost of the repairs was correct when the estimate was prepared for a different vehicle. Therefore, the State has failed to show that the district court did not abuse its discretion when it awarded restitution.

CONCLUSION

Mr. Stewart respectfully requests that the district court’s order for restitution and judgment be vacated and the case be remanded to the district court to determine the correct restitution amount.

DATED this 31st day of August, 2016.

/s/ _____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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RPA/eas